



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Parts 385, 390, and 391**

**[Docket No. FMCSA-2018-0224]**

**RIN 2126-AC15**

#### **Record of Violations**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its regulations to eliminate the requirement that drivers operating commercial motor vehicles (CMVs) in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. This requirement is largely duplicative of a separate rule that requires each motor carrier to make an annual inquiry to obtain the motor vehicle record (MVR) for each driver it employs from every State in which the driver holds or has held a CMV operator's license or permit in the past year. To ensure motor carriers are aware of traffic convictions for a driver who is licensed by a foreign authority rather than by a State, the Agency amends the rule to provide that motor carriers must make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit.

**DATES:** This final rule is effective [Insert date 60 days after date of publication in the FEDERAL REGISTER].

Comments on the information collections in this final rule must be submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) by [Insert date 30 days after date of publication in the FEDERAL REGISTER].

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Comments and recommendations for the proposed information collections should be sent within 30 days of publication of this final rule to <https://www.reginfo.gov/public/do/PRAMain>. Find the particular information collection by selecting “Currently under Review - Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, Office of Driver and Carrier Operations, MCPSD, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; (202) 366-4325; [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

**SUPPLEMENTARY INFORMATION:**

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## **I. Availability of Rulemaking Documents**

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2018-0224/document> and choose the document to review. To view comments, click this final rule, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

## **II. Executive Summary**

### **A. Purpose and Summary of the Final Rule**

In this final rule, the Agency rescinds 49 CFR 391.27 (Record of violations) and removes all related references to the rule in the Federal Motor Carrier Safety Regulations (FMCSRs). Section 391.27 provides that each motor carrier must, at least once every 12 months, require each driver it employs to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances, other than violations

involving only parking, for which the driver has been convicted or has forfeited bond or collateral during the preceding 12 months. When a driver does not have any such violations to report, the driver is required to furnish a certification to that effect. The motor carrier must retain the list of violations or certification of no violations in the driver's qualification file.

FMCSA retains the requirement in § 391.25(a) (Annual inquiry and review of driving record) for an annual MVR inquiry. Section 391.25 requires each motor carrier to make an annual inquiry to obtain the MVR for each driver it employs from every State<sup>1</sup> in which the driver holds or has held a CMV operator's license or permit in the past year. The motor carrier must review the MVR obtained and maintain a copy of it in the driver's qualification file. Section 391.25 applies to all motor carriers, domestic and foreign, but is limited to inquiries for drivers licensed by a State.

To ensure motor carriers are aware of traffic convictions for a driver who is licensed by a foreign authority rather than by a State, FMCSA amends § 391.25(a) to require motor carriers to inquire annually of each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. This change requires motor carriers to request MVRs from Canadian and Mexican driver's licensing authorities.

To maintain consistency within part 391 with respect to requests for MVRs, FMCSA makes conforming changes to the hiring process. The Agency amends § 391.23 (Investigation and inquiries) to require a motor carrier to make an inquiry to each driver's licensing authority where the driver holds or has held a motor vehicle operator's license or permit during the preceding 3 years to obtain the driver's MVR when a motor carrier is hiring a driver. FMCSA changes § 391.21 (Application for employment) to require each driver to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver so

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<sup>1</sup> For purposes of part 391, the term "State" includes the District of Columbia (49 CFR 390.5T).

motor carriers can make the required inquiries under § 391.23. In addition to the proposed changes, this rule adopts additional minor clarifications and conforming changes, which are outlined in the section discussing changes from the proposed rule and the Section-by-Section Analysis below.

## **B. Costs and Benefits**

The elimination of § 391.27 results in cost savings to drivers, as they will no longer spend time completing a list of convictions for traffic violations or certificate of no convictions. It also results in cost savings to motor carriers, as they no longer have to file the lists or certificates in driver qualification files. The Agency estimates that rescinding § 391.27 results in cost savings of \$24.9 million over 10 years, at a 7 percent discount rate. The annualized cost savings are estimated to be \$3.5 million.

Changes made in the FMCSRs to require inquiries to Canadian and Mexican driver's licensing authorities have minimal, if any, impact. Only a small proportion of CMV drivers operating in the United States are licensed by a foreign authority rather than by a State. Of the 6.8 million CMV drivers reported in FMCSA's *2020 Pocket Guide to Large Truck and Bus Statistics*,<sup>2</sup> the Agency estimates that at most only 2.3 percent are employed by Canadian motor carriers operating in the United States and 0.5 percent are employed by Mexican motor carriers operating in the United States. The combined total 2.8 percent represents 149,119 drivers reported as being employed by Canadian and Mexican motor carriers.<sup>3</sup>

These changes do not increase reporting and recordkeeping costs for motor carriers or drivers. This is because the Motor Carrier Management Information System

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<sup>2</sup> Available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-10/FMCSA%20Pocket%20Guide%202020-v8-FINAL-10-29-2020.pdf> (last accessed Oct. 22, 2021).

<sup>3</sup> FMCSA's *2020 Pocket Guide to Large Truck and Bus Statistics* shows that 350 non-North American motor carriers are registered to operate in the United States (see Table 1-10). They report employing a total of 1,255 drivers, which is a de minimis number when compared to the 6.8 million CMV drivers operating in the United States. It is very rare for domestic motor carriers to employ drivers licensed by a non-North American authority. Therefore, the focus of FMCSA's analysis is on drivers licensed by Canadian and Mexican driver's licensing authorities.

(MCMIS), the repository for the Agency's driver population data, counts the total number of drivers reported by motor carriers, both foreign and domestic, and, for purposes of information collection burden calculation, the median fee for obtaining an MVR from either a foreign or a domestic authority is generally the same.<sup>4</sup> FMCSA uses the MCMIS driver population data, which currently includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork.

In addition, Canadian and Mexican motor carriers are already required by their applicable safety codes to request MVRs for their drivers from their country's licensing authorities.<sup>5</sup> Accordingly, FMCSA has determined that the changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities to obtain MVRs imposes no new record keeping or reporting costs or burdens. Though Canadian and Mexican motor carriers are not required to change their current business practices and do not have any new costs or burdens imposed as a result of this rule, FMCSA continues to include the costs and burdens for requesting MVRs in the current information collection to treat all motor carriers consistently and for administrative convenience.

FMCSA does not expect this rule will negatively affect CMV safety. Motor carriers are still required by § 391.25 to make an inquiry at least annually to each driver's licensing authority in which an employed driver holds or has held a CMV operator's license or permit to obtain the MVR of each driver they employ. Thus, motor carriers still

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<sup>4</sup> Motor carriers typically must pay driver's licensing authorities to request MVRs. The current OMB-approved information collection associated with the reporting and recordkeeping requirements of §§ 391.23 and 391.25 estimates the cost incurred by motor carriers to request MVRs based on the median fee for the 51 State driver's licensing agencies (SDLAs). The median fee used in this analysis is based on the 51 SDLAs and Canadian licensing authorities' fees (there is no fee to request MVRs in Mexico). The median fee is \$9 with or without the Canadian authorities' fees. Thus, this new requirement imposes no new costs on motor carriers.

<sup>5</sup> See Section XI.A., below, and footnote 15 for additional information.

have a reliable way to learn of any convictions for traffic violations incurred by their driver employees.

### **III. Abbreviations**

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| AAMVA     | American Association of Motor Vehicle Administrators       |
| ATA       | American Trucking Associations, Inc.                       |
| BLS       | Bureau of Labor Statistics                                 |
| CDLIS     | Commercial Driver's License Information System             |
| CDL       | Commercial Driver's License                                |
| CMV       | Commercial Motor Vehicle                                   |
| DOL       | Department of Labor  |
| DOT       | Department of Transportation                               |
| ECEC      | Employer Costs for Employee Compensation                   |
| ENS       | Employer Notification Services                             |
| E.O.      | Executive Order  |
| FMCSA     | Federal Motor Carrier Safety Administration                |
| FMCSRs    | Federal Motor Carrier Safety Regulations                   |
| FR        | Federal Register   |
| ICR       | Information Collection Request                             |
| LTL       | Less-than-Truckload  |
| MCMIS     | Motor Carrier Management Information System                |
| MVR       | Motor Vehicle Record                                       |
| NAICS     | North American Industry Classification System              |
| NCSC      | National Center for State Courts                           |
| NDAA      | National District Attorneys Association                    |
| NPRM      | Notice of Proposed Rulemaking                              |
| NSC       | Canadian National Safety Code                              |
| NTSB      | National Transportation Safety Board                       |
| OES       | Occupational Employment Statistics                         |
| OIG       | Office of Inspector General                                |
| OIRA      | Office of Information and Regulatory Affairs               |
| OMB       | Office of Management and Budget                            |
| OOIDA     | Owner-Operator Independent Drivers Association             |
| OTR       | Over-the-Road  |
| PSP       | Pre-Employment Screening Program                           |
| RFA       | Regulatory Flexibility Act                                 |
| RMV       | Registry of Motor Vehicles                                 |
| SBREFA    | Small Business Regulatory Enforcement Fairness Act of 1996 |
| SDLA      | State Driver's Licensing Agency                            |
| Secretary | Secretary of Transportation                                |
| SBA       | Small Business Administration                              |
| SOC       | Standard Occupation Code                                   |
| §         | Section Symbol   |
| TCA       | Truckload Carriers Association                             |
| TL        | Truckload  |
| U.S.C.    | United States Code   |

#### **IV. Legal Basis for the Rulemaking**

This final rule eliminates a duplicative paperwork requirement and clarifies the licensing authority from which motor carriers obtain MVRs. The rule is based primarily on the authorities of 49 U.S.C. 31502(b) and 31136(a).

Section 31502(b) authorizes the Secretary of Transportation (Secretary) to establish requirements for the qualifications of employees and the safety of operation of a motor carrier. This rule addresses the qualifications of motor carrier employees, consistent with the safe operation of CMVs.

Section 31136 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a)(1) requires that the Secretary issue regulations on CMV safety, including regulations to ensure that CMVs are operated safely. The remaining statutory factors and requirements in section 31136(a), to the extent they are relevant, are also satisfied here. In accordance with section 31136(a)(2), the requirement for motor carriers to inquire of driver's licensing authorities to obtain the MVR of each driver they employ does not impose any responsibilities on CMV drivers that would impair their ability to operate the vehicles safely. This rule does not address medical standards for drivers or possible physical effects caused by driving CMVs (section 31136(a)(3) and (a)(4), respectively). There is no basis to anticipate that drivers would be coerced (section 31136(a)(5)) because of this rule. In addition, the Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe, and thus to remove, recordkeeping and reporting requirements. This rule rescinds § 391.27 using that authority.

The FMCSA Administrator is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311 and 315 as they relate to CMV operators, programs, and safety.



Finally, prior to prescribing any regulations, FMCSA must consider the “costs and benefits” (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are addressed in the Regulatory Analyses of this rule.

## **V. Discussion of Proposed Rule**

On December 14, 2020, FMCSA published a notice of proposed rulemaking (NPRM) (85 FR 80745). The NPRM proposed to eliminate the duplicative requirement in § 391.27 that drivers operating a CMV in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. FMCSA proposed to retain the requirement in § 391.25(a) for an annual MVR inquiry, but to change it to require an annual inquiry to obtain the MVR for each driver it employs from every driver’s licensing authority, instead of State, in which the driver holds or has held a CMV operator’s license or permit in the past year. FMCSA proposed to conform §§ 391.21, 391.23, and 391.51 (General requirements for driver qualification files) by changing references to a “State” to a “driver’s licensing authority.” FMCSA also proposed changes to remove references to § 391.27 in Appendix B to Part 385—Explanation of Safety Rating Process and in §§ 391.11 (General qualifications of drivers), 391.51, and 391.63 (Multiple-employer drivers). A detailed discussion of the regulatory background of § 391.27, the rationale for eliminating it, and what was proposed is set forth in the NPRM (85 FR 80748-50).

## **VI. Discussion of Comments and Responses**

### **A. Comment Overview**

FMCSA requested comments on the NPRM for 60 days, from December 14, 2020 through February 12, 2021, and received 97 submissions. Of those submissions, nine commented on matters outside of the scope of the rulemaking. Two submissions were withdrawn. Accordingly, 86 responsive submissions were received.

The 86 responsive submissions were primarily from individuals. Most of the individuals were drivers or associated with motor carriers. Several commenters identified themselves as compliance or safety professionals for motor carriers. Commenters also represented various trade associations and organizations. Entities that submitted comments and supported the proposed rule included the American Bus Association, the American Trucking Associations, Inc. (ATA), the Owner-Operator Independent Drivers Association (OOIDA), the Tennessee Trucking Association, the Truckload Carriers Association (TCA), the United Motorcoach Association, Driver iQ, and DriverReach. Of the 86 responsive submissions, 71 commenters supported the proposed rule, while 15 commenters opposed it. No comments opposing the rule were received from trade associations, labor organizations, or safety advocate organizations.

Commenters supporting the rulemaking provided multiple reasons for their position. Many commenters expressed that the annual MVR check required by § 391.25 is a more accurate depiction of a driver's traffic conviction history than information received from the driver and that eliminating the requirement would not have an adverse effect on safety. Other common reasons for supporting the elimination of the requirement for drivers to provide a list of their traffic convictions included that it is redundant, time consuming, does nothing to improve safety, is unreliable, takes time away from measures that could improve safety, is merely a recordkeeping "paper chase," and is outdated. Several drivers commented that it can be very difficult to complete the paperwork when they are on the road. One driver stated the requirement is a way for motor carriers to trap drivers in a lie when they have innocently forgotten a conviction. An owner-operator commented that it is a nuisance for such operators to take the time to tell themselves they have not received any convictions. Many motor carriers stated it is time consuming, costly, and burdensome to distribute the forms to drivers, track down drivers who do not return them, and file the forms. One motor carrier commented it takes the better part of a

month to receive information from drivers and another estimated the annual administrative burden to be in excess of 100 hours. This commenter added these are hours that could otherwise be spent on improving driver training and communication and other activities more directly targeted at creating better and safer drivers. Several other motor carriers commented that they do not rely on the information provided to them by the drivers.

OOIDA commented that duplicative requirements, such as those in § 391.27, are often more compliance obligations than safety measures, which can disproportionately harm small-business truckers who have to cut through the red tape themselves. The Tennessee Trucking Association commented that the regulation is redundant, and it is hard to get the form completed for over-the-road drivers. It added that most of the time the motor carrier pulls the MVR before the form is completed, so the carrier already knows what is on a driver's record.

The most common reason for opposing the rule related to safety concerns. Those comments and others opposing the rule are discussed below.

#### **B. Safety Concerns Relating to the Elimination of § 391.27**

Of the 15 individuals who opposed the rule, 8 specifically cited safety concerns that motor carriers would have no way to know about drivers' traffic convictions without § 391.27. For example, one commenter asked how employers can know what kind of driver they would be hiring without a record of infractions against that driver. Another commenter stated there are going to be more accidents if drivers know they do not have to report them. A different commenter stated, "This is what keeps the trucking industry safe. When you drop the requirement for this, how are the employers going to know who is a safe driver versus one who is reckless?" One commenter noted companies need to be aware of changes in the driving habits of drivers receiving violations to prevent accidents. Another commenter stated that eliminating § 391.27 does away with one more control the

motor carrier has to monitor the driver's safety performance on the road. A different commenter stated that reporting traffic and safety violations to employers helps a company or driver try to operate more safely.

Another commenter who opposed the rule stated § 391.27 benefits motor carriers because the requirement allows them to review the driving record in both CMVs and personal vehicles. The commenter noted that convictions for driving while intoxicated in a personal vehicle may not be discovered if not for running an MVR. The commenter was in favor of the annual MVR review and indicated some motor carriers and insurers would not obtain MVRs in the absence of the rule. A different commenter stated that too many motor carriers rely on their insurance companies to review the MVR and they often miss relevant information. Another commenter did not want someone with a horrible driving record to be behind the wheel of a CMV.

*FMCSA response:*

After consideration of the comments submitted to the docket, the Agency continues to find that removing § 391.27 will not adversely affect CMV safety. The majority of commenters who opposed eliminating § 391.27 misunderstood the proposal. Many of the commenters understandably confused the requirements of §§ 391.27 and 391.25 because of their duplicative nature. FMCSA emphasizes that the final rule does not remove the annual requirement for a motor carrier to obtain and review an MVR as required by § 391.25. Thus, employers still have a way to know the driving records of their drivers and a way to distinguish safe from unsafe drivers. Furthermore, the Agency retains §§ 391.21 and 391.23, which require motor carriers to obtain and review MVRs and safety performance history when hiring a driver, as well as the general qualification requirements for drivers in § 391.11.

The elimination of § 391.27 does not preclude employers from requiring their drivers to provide a list of their traffic convictions as a condition of employment. Rather,

the elimination of § 391.27 provides employers with flexibility to obtain traffic conviction information in a manner that is most efficient and effective in their situation. Eliminating § 391.27 allows employers to redirect their resources in ways that may have greater safety benefits; this is particularly the case for employers that continuously monitor the driving records of their employees.

**C. Availability, Timeliness, and Accuracy of Driving Histories**

Two commenters noted State traffic conviction reporting has improved significantly. The United Motorcoach Association commented that as recently as a decade ago States were considerably less dependable reporting violations to drivers' state of licensure; however, "States have improved their reporting significantly." An individual commenter stated that the chances of error in the driving history is basically non-existent with the increase in computerized records since § 391.27 was enacted.

In contrast, four commenters raised concerns regarding the availability, timeliness, and accuracy of driver license status and driving histories. Three commenters stated there are issues with States either being slow to report traffic convictions or not reporting them at all. Although ATA recommended eliminating § 391.27 and "strongly" supported FMCSA's proposal, ATA noted concerns about FMCSA's efforts to ensure the information provided to motor carriers to make critical safety decisions is accurate, timely, and complete. ATA commented, "While state MVRs have significantly improved over the last 20 years, there are still significant deficiencies, of varying degrees, across the states."

ATA cited a recent National Transportation Safety Board (NTSB) report that highlighted deficiencies with the Massachusetts Registry of Motor Vehicles' (RMV) out-of-state driver's license notifications process. According to ATA's summary of the report, the deficiencies led to the RMV's failure to revoke the commercial driver's license (CDL) of a driver involved in a crash that killed seven people. ATA stated the

NTSB “found RMV failed to revoke thousands of non-CDL driver’s licenses. While the report singled out [RMV], NTSB concluded that the problems observed in Massachusetts might exist nationwide.”

Two additional commenters noted it can take months for a citation to be fully adjudicated and become a conviction listed on the driver’s MVR. One of the commenters expressed concern that these delays put the motor carrier at increased risk, should the driver be involved in an accident during the time the authority takes to rule on the citation.

*FMCSA response:*

Nothing in the comments changes FMCSA’s determinations that the lists provided by drivers are less reliable than MVRs issued by driver’s licensing authorities and the lists have minimal safety value. There have been significant improvements in data collection and transmission that support this rulemaking since § 391.27 was adopted, and there are more improvements to come. Additionally, the Agency notes that § 391.27 requires drivers to report convictions, not citations, so the impact of delays adjudicating citations exists even in the presence of § 391.27.

In connection with the June 2019 crash that was the subject of the NTSB report referenced above, the NTSB found that the Massachusetts RMV “was not systematically processing paper notifications it received from other States.”<sup>6</sup> Because of the crash, FMCSA focused its annual program reviews to determine whether other States had substantial numbers of unprocessed paper notifications. FMCSA notes most unprocessed paper notifications found at the Massachusetts RMV were for non-CMV drivers, who do not fall within FMCSA’s regulatory authority.

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<sup>6</sup> DOT, Office of Inspector General, FMCSA Has Gaps and Challenges in Its Oversight of CDL Disqualification Regulations, July 14, 2021, Report No. ST2021030, page 1. Available at <https://www.oig.dot.gov/library-item/38455> (last accessed Sept. 13, 2021).

The use of paper notifications and the challenges of processing them were among the principal issues discovered at the Massachusetts RMV. FMCSA addressed the issues in large part through the Commercial Driver's License Standards, Requirements and Penalties; Exclusively Electronic Exchange of Driver History Record Information final rule published on July 23, 2021 (86 FR 38937). That rule requires SDLAs to implement the exclusive electronic exchange of driver history record information, which includes convictions and withdrawals, for CDL holders. States must achieve substantial compliance with this requirement as soon as practicable, but not later than August 22, 2024. All States currently have the technical capability to transmit driver history record information electronically. In addition, in fiscal years 2019, 2020, and 2021, FMCSA awarded grant funding to the American Association of Motor Vehicle Administrators (AAMVA) to perform a Commercial Driver's License Information System (CDLIS) impact analysis of eliminating the paper exchange of convictions and withdrawals between jurisdictions for the purposes of reporting out-of-state convictions and withdrawals. The purpose of the grants was to analyze the causes, proposed solutions, implementation impacts, and system requirements for ensuring that States transmit out-of-state convictions and withdrawals exclusively through an electronic means.

On July 14, 2021, the DOT Office of Inspector General (OIG) issued its report for a self-initiated audit titled "FMCSA Has Gaps and Challenges in Its Oversight of CDL Disqualification Regulations." OIG made seven recommendations to strengthen FMCSA's oversight of States' actions to comply with Federal CDL disqualification requirements. Completion of the OIG recommendations will strengthen FMCSA's annual program reviews and enhance FMCSA's efforts to keep unsafe CDL drivers off the road.

FMCSA is working diligently to complete the OIG recommendations and collaborating with States and AAMVA as appropriate.<sup>7</sup>

Finally, FMCSA continues to provide outreach to courts, which has led to advancements in transmission of convictions from courts to SDLAs. FMCSA leverages Commercial Driver's License Program Implementation grant funds to promote better understanding among judges, prosecutors, and court staff regarding CDL/CMV convictions. For example, the National Center for State Courts (NCSC) created an online Commercial Driving Resource Center for courts, which focuses on research, technical assistance, outreach and awareness, and other resources. One of NCSC's research projects was to review commercial driver cases to learn how they are processed by courts and how courts communicate information to the SDLAs. From this research, the NCSC has developed best practices and identified current challenges for reporting convictions to States. In addition, the National District Attorneys Association (NDAA), under an FMCSA grant, developed a Commercial Driver's License Resource Portal. Several of the resources are centered around the prohibition against "masking" convictions.<sup>8</sup> NDAA has developed training, a reference guide, and articles on masking convictions. FMCSA continues to provide grant funding and to engage in outreach in furtherance of enhanced reporting and transmission of convictions from courts to SDLAs.

#### **D. Reporting of All Traffic Citations and Violations**

Two commenters recommended that FMCSA change § 391.27 to require drivers to report not only traffic convictions to their employers, but all citations and violations as well. One of the commenters stated that revision would allow employers to track the disposition of a citation to its conclusion. The commenter continued that the fact a

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<sup>7</sup> FMCSA plans to complete three of the OIG recommendations by March 31, 2022 and the remaining recommendations by December 31, 2023.

<sup>8</sup> "Masking" occurs when a court allows the conviction of a CDL holder for a traffic violation to be deferred, dismissed, or go unreported (see 49 CFR 384.225).



citation is dismissed, or the driver is found not guilty in court, does not necessarily mean the driver did not engage in unsafe or risky behavior behind the wheel. According to the commenter, if an employer is aware of the behavior, the employer would have the opportunity to take corrective action and possibly change the unsafe behaviors before the driver is involved in an accident.

*FMCSA response:*

FMCSA does not support this recommended change to § 391.27. Such a change would broaden the burden of the regulation as opposed to reducing it, and its effectiveness would still be dependent on the driver's memory and truthfulness. Moreover, the Agency did not propose to expand the regulatory reporting requirements of § 391.27 in this rulemaking.

**E. Traffic Conviction Notification Requirement for Non-CDL Drivers**

One commenter opposed elimination of § 391.27 because there is no requirement for non-CDL drivers to inform their employers of traffic convictions within 30 days, as is required by 49 U.S.C 31303(a) and § 383.31 for CDL drivers. The commenter noted that drivers operating vehicles that do not require a CDL do not always tell employers about receiving a citation, and only a copy of the citation will tell the employer what the driver was driving. The commenter continued that at least once a year these non-CDL drivers must answer that question on a form required by FMCSA.

Although ATA supported the elimination of § 391.27, the group noted that some of its members maintain company policies that require non-CDL drivers operating a CMV to report violations within a predetermined amount of time and that some members raised concerns over eliminating the regulatory requirement for notification. Therefore, ATA suggested that FMCSA consider whether an additional rulemaking to establish a traffic conviction notification requirement for non-CDL drivers like the reporting requirement for CDL drivers in § 383.31 would be warranted.

*FMCSA response:*

The lack of a reporting requirement for non-CDL drivers that parallels the requirement for CDL drivers to inform their employers of traffic convictions within 30 days is not a persuasive reason to retain § 391.27. With respect to adding a reporting requirement for non-CDL holders that parallels § 383.31, ATA correctly states additional rulemaking would be necessary to propose such a change. FMCSA continues to find the annual MVR check required by § 391.25 is a more accurate depiction of a driver's traffic conviction history than information from the driver. Accordingly, FMCSA currently is not considering a future rulemaking on this topic. However, as stated above, the elimination of § 391.27 does not preclude employers from requiring their drivers to provide a list of their traffic convictions as a condition of employment.

**F. Obtaining MVRs from Foreign Driver's Licensing Authorities**

Four comments considered the change to require motor carriers to request MVRs from foreign driver's licensing authorities. Two industry vendors, DriverReach and Driver iQ, commented that the change is logical and appropriate because affected motor carriers already obtain these records for safety and driver screening purposes, so the change should not add a new burden or expense. ATA stated that it supports the revision to ensure that the requirement extends to all jurisdictions.

TCA noted a concern that stakeholders may not know where or how to request MVRs from Mexico or Canada. TCA requested that FMCSA implement an educational campaign prior to finalizing this rule to tell motor carriers how to request an MVR for international drivers. Some of ATA's members raised concerns about obtaining foreign MVRs from outside North America. ATA stated, however, that the "good faith effort" requirement provides motor carriers with sufficient flexibility to address situations where an MVR might be difficult or impossible to obtain.

Driver iQ commented that it often can take 90 to 120 days to obtain MVRs from foreign driver's licensing authorities and requested that FMCSA consider a lengthy effective date for any final rule. It commented further that FMCSA should consider language requiring a motor carrier to maintain documentation of each report request. In the event no report is received, the document would be used by a motor carrier to demonstrate a good faith effort to obtain it. Driver iQ also requested that the regulation include language requiring the foreign authority to provide access to the reports by an appointed agent of the carrier.

*FMCSA response:*

FMCSA adopts the change to require motor carriers to request an MVR from foreign driver's licensing authorities as proposed. Because motor carriers already appear to be requesting MVRs, a longer effective date is not necessary.

In practice, this change will have minimal impact on domestic motor carriers and, therefore, educational outreach to them is not necessary. However, FMCSA will re-evaluate the need for public outreach if questions arise during implementation. Only a small proportion of CMV drivers operating in the United States are licensed by a foreign authority rather than by a State. Most of these drivers are employed by Canadian and Mexican motor carriers. As noted above, a de minimis number of CMV drivers who are licensed by a non-North American authority operate in the United States, and it is very rare for domestic motor carriers to employ such drivers. Accordingly, the number of drivers for whom domestic motor carriers will be required to obtain MVRs from foreign driver's licensing authorities is small, and it will be a very rare occurrence to request an MVR from a non-North American authority. In such situations, it is reasonable to conclude that the driver will know how to obtain an MVR.

Many motor carriers most likely already maintain documentation of each MVR they request (at least until an MVR is received); however, FMCSA declines to make that

a regulatory requirement, which would increase the paperwork burden of the regulation. The Agency clarifies that the requirement to make a “good faith effort” to obtain an MVR applies to investigations made when hiring a driver under § 391.23(b), not to the annual MVR review.

FMCSA does not have authority to require foreign authorities to provide access to their records by an appointed agent of the motor carrier. Requests for MVRs must be made in the form and manner each authority prescribes. However, FMCSA notes that its guidance for § 391.25 is revised to provide that motor carriers may use third parties to ask driver’s licensing authorities for copies of the driving record of driver-applicants.

#### **G. Impact on Driver Qualification Files**

TCA encouraged FMCSA to conduct an educational campaign on how the elimination of § 391.27 would affect the driver qualification file because the list currently required by § 391.27 must be included in the file. TCA stated carriers must be fully aware of and understand the recordkeeping changes they will need to make. TCA offered to publicize the new requirements to its members but urged FMCSA to go further and hold public educational events to ensure all parties are made aware of the impacts of this new rule on driver qualification files.

#### *FMCSA response:*

Because this rule eliminates the requirements in § 391.27 for drivers to provide either a list of their traffic convictions or a certificate that they do not have any traffic convictions to report to their employers, there no longer is any document for an employer to place in the driver qualification file. This rule amends § 391.51 by eliminating paragraph (b)(6), which currently provides the driver qualification file must include the documents required by § 391.27. FMCSA does not plan to hold public educational events in connection with the rule. However, FMCSA will re-evaluate the need for public outreach if questions arise during implementation.

## **H. Changes to § 391.23(b)**

TCA commented that it supports FMCSA's proposal to amend § 391.23(b) to remove the requirement in the hiring process for a motor carrier that receives no MVR from the driver's licensing authority to certify that no record exists for the driver in that jurisdiction. TCA noted that this requirement currently exists on top of the required documentation of the good faith effort to obtain the MVR. TCA stated this is another positive example of FMCSA thoughtfully reviewing its regulations to remove inefficiencies and applauded the Agency for recommending this change to alleviate the recordkeeping burden on carriers.

### *FMCSA Response:*

FMCSA adopts the change to § 391.23(b) as proposed in the NPRM. FMCSA agrees that documentation of a good faith effort to obtain the MVR is sufficient evidence of compliance with the regulatory requirement. Moreover, it is impossible for a motor carrier to know what records are or are not maintained for a particular driver by the licensing authority, because the motor carrier does not have access to a licensing authority's records.

## **I. Employer Notification Services (ENS)**

ATA, Driver iQ, and DriverReach suggested that FMCSA increase its focus on greater adoption of ENS systems by States. State-based ENS systems allow employers to be notified automatically when there is a change to driver history record information. These commenters endorsed the use of ENS as a means to improve safety but noted only 18 States currently have systems in place that are consistent with FMCSA standards and guidance.

### *FMCSA response:*

FMCSA agrees that continuous monitoring systems are very effective tools to keep employers aware of changes to driver history record information, which is likely to

enhance safety. Indeed, several NPRM commenters stated they use continuous monitoring systems and find them very beneficial. As acknowledged by DriverReach and Driver iQ, FMCSA did not make any proposals relating to ENS in the NPRM and, therefore, is not addressing it in this final rule. However, the rule eliminates duplicative effort and increases flexibility for employers to use safety-enhancing tools, including continuous monitoring systems.

FMCSA notes, as did some commenters, that the Agency currently has a web-based Pre-Employment Screening Program (PSP). As stated by the American Bus Association, PSP helps motor carriers make more informed hiring decisions by providing secure, electronic access to a CMV driver's 5-year crash and 3-year inspection history from FMCSA's MCMIS database.

#### **J. Reporting of Traffic Violations Generally**

One commenter asked if the rule applies to reporting past convictions for driving while intoxicated and driving under the influence. Another commenter recommended a change so that drivers would not have to report less serious and minor traffic violations to their employers.

##### *FMCSA Response:*

This rule only eliminates § 391.27 and its requirement that drivers operating CMVs in interstate commerce prepare and submit a list of their traffic convictions to their employers annually. It does not change the requirement in § 383.31 for CDL drivers to inform their employers of all traffic convictions in any type of vehicle within 30 days. It also does not change the conviction information required to be provided to prospective employers on employment applications under § 391.21. Thus, convictions for driving while intoxicated and driving under the influence continue to be reportable under §§ 383.31 and 391.21. These regulations require reporting of all traffic convictions other

than those that relate only to parking. FMCSA did not propose and is not considering a change to the reporting requirements for these regulations.

**K. Outside the Scope of the Rulemaking**

Two commenters recommended changes to the requirements in § 391.21 for employment applications. One recommended that paragraphs (b)(7), (b)(8), and (b)(9), which require reporting of accidents, traffic convictions, and actions against a driver's license, respectively, be eliminated because they also are duplicative. The other commenter recommended the elimination of paragraph (b)(11) that requires 10 years of driving history for drivers applying to operate a CMV that requires a CDL.

Rather than responding to the proposed rule, one commenter reported on the commenter's own driving record. Another commenter recommended a regulatory change to require drivers and motor carriers to confer to ensure citations have been paid in a timely manner. Alternatively, the commenter recommended that FMCSA create a public system that could be checked to see whether citations have been paid.

Several commenters addressed regulations and concerns relating to electronic logging devices, hours of service, the Drug and Alcohol Clearinghouse, brokers, and the Compliance, Safety, Accountability (CSA) program. One commenter stated it does not make sense that medical certification must be maintained when a driver is taking a break from trucking. Another commenter suggested that money saved be used to educate medical examiners on FMCSA protocols and regulations.

*FMCSA Response:*

Because these comments are outside the scope of this rulemaking or are not responsive to the NPRM, no response from FMCSA is required. However, while general changes to the employment application in § 391.21 are outside the scope of this rulemaking, the Agency published an advance notice of proposed rulemaking on March 19, 2019 that requested comment on changes to § 391.21 (84 FR 8497).

Additionally, the requirement that drivers provide their employment history operating a CMV requiring a CDL during the prior 10 years when applying to operate such a CMV is statutorily mandated; therefore, FMCSA may not eliminate that requirement (see 49 U.S.C. 31303(c) and 49 CFR 383.35). Commenters presenting an issue that is outside of the scope of this rulemaking may wish to consult § 389.31 for information on how to petition FMCSA to establish, amend, interpret, clarify, or withdraw a regulation to the extent such options relate to their concerns.

## **VII. Guidance**

FMCSA employs guidance to explain how the Agency applies regulations to specific facts. Such guidance does not have the force and effect of law, is strictly advisory, and is not meant to bind the public in any way. Conformity with guidance is voluntary. Guidance is intended only to provide information to the public regarding existing requirements under the law or FMCSA policies. Guidance does not alter the substance of a regulation. Guidance for specific regulations is available through the Guidance Portal on FMCSA's website.

This rule amends regulations that have associated guidance. FMCSA changes the guidance to conform to the changes made in this rule.

### **A. Section 391.23 Investigation and Inquiries**

FMCSA revises Question 2 to § 391.23<sup>9</sup> as proposed to reflect that inquiries for MVRs must be made to all "driver's licensing authorities" where the driver holds or has held a motor vehicle operator's license or permit, rather than only to "States." The revised guidance for Question 2 reads as follows:

Question 2: May motor carriers use third parties to ask driver's licensing authorities for copies of the driving record of driver-applicants?

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<sup>9</sup> Available at <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-motor-carriers-use-third-parties-ask-state-agencies> (FMCSA-DQ-391.23-Q002) (last accessed Oct. 13, 2021).



Guidance: Yes. Driver information services or companies acting as the motor carrier's agent may be used to contact driver's licensing authorities. However, the motor carrier is responsible for ensuring the information obtained is accurate.

**B. Section 391.25 Annual Inquiry and Review of Driving Record**

With respect to Question 1 to § 391.25,<sup>10</sup> Driver iQ recommended that the guidance be revised to make clear that the driver's list of convictions is not part of "information about the driver's experience" that is "reasonably available." Driver iQ stated, "This change would be consistent with the spirit and letter of the NPRM, and it would clarify what information is reasonably available to a motor carrier going forward." While the Agency has considered Driver iQ's suggestion to revise the guidance in Question 1, FMCSA has concluded that a change is not needed based on the elimination of the § 391.27 requirements.

Accordingly, the Agency revises Question 1 to § 391.25 as proposed to reflect that MVRs must be requested from all "driver's licensing authorities" rather than only "States." FMCSA makes an additional change for clarity. The Agency replaces the words "are such indications" with "are indications of disregard for public safety." The revised guidance for Question 1 reads as follows:

Question 1: To what extent must a motor carrier review a driver's overall driving record to comply with the requirements of § 391.25?

Guidance: The motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether they are part of an official record maintained by a driver's licensing authority, as well as any other information that would indicate the driver has shown a lack of due regard for the safety of the public. Violations of traffic and criminal laws, as well as the

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<sup>10</sup> Available at <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/what-extent-must-motor-carrier-review-drivers-overall> (FMCSA-DQ-391.25-Q001)) (last accessed Oct. 13, 2021).

driver's involvement in motor vehicle accidents, are indications of disregard for public safety and must be considered. A violation of size and weight laws should also be considered.

With respect to Question 3 to § 391.25,<sup>11</sup> the Agency revises the question as proposed to reflect that MVRs must be requested from all "driver's licensing authorities," rather than only "States," and to improve clarity and correct grammatical errors. In addition, FMCSA removes the first sentence of the proposed guidance because it is not responsive to the question. The sentence provided, "An examination of the official driving record maintained by the driver's licensing authority is not required during the annual review." The revised guidance for Question 3 reads as follows:

Question 3: May motor carriers use third parties to ask driver's licensing authorities for copies of driving records to be examined during the carrier's annual review of each driver's record?

Guidance: Yes. Motor carriers may use third-party agents, such as driver information services or companies, to contact driver's licensing authorities and obtain copies of driving records. However, the motor carrier is responsible for ensuring the information is accurate.

#### **C. Section 391.27 Record of Violations**

FMCSA rescinds the guidance to § 391.27 as proposed.

### **VIII. Changes From the NPRM**

In this final rule, FMCSA adopts all the provisions proposed in the NPRM and introduces additional minor clarifications and conforming changes. FMCSA amends the definition of *motor vehicle record* in § 390.5T (Definitions) by clarifying that only records of drivers licensed by a State are subject to the Driver Privacy Protection Act and

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<sup>11</sup> Available at <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-motor-carriers-use-third-parties-ask-state-agencies-0> ((FMCSA-DQ-391.25-Q003)) (last accessed Oct. 13, 2021).

by making editorial changes for clarity. The definition reads, “*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.” FMCSA conforms § 391.63(b) by changing “State” to “driver’s licensing authority” in the first sentence.

The Agency also makes conforming changes to address cross-references impacted by the elimination of § 391.27 and redesignation of section paragraphs. In newly redesignated § 391.51(b)(6)(iii), FMCSA changes the reference from “§ 391.51(b)(8)” to “§ 391.51(b)(7).” In § 391.67(a) (Farm vehicle drivers of articulated commercial motor vehicles), the Agency changes the references from “Section 391.11(b)(1), (b)(6) and (b)(8)” to “Section 391.11(b)(1) and (b)(7).” Similarly, in § 391.68(a) (Private motor carrier of passengers (nonbusiness)), the Agency changes the references from “Section 391.11(b)(1), (b)(6) and (b)(8)” to “Section 391.11(b)(1) and (b)(7).”

## **IX. International Impacts**

Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. The specific impacts of this rule on foreign licensed drivers and foreign motor carriers operating CMVs in the United States are discussed throughout the preamble of this rule.

## **X. Section-By-Section Analysis**

This section summarizes the regulatory changes FMCSA makes to 49 CFR parts 385, 390, and 391. FMCSA adopts all the provisions as proposed in the NPRM and repeats the specific changes for the convenience of the reader. FMCSA also describes additional minor clarifications and conforming changes made in §§ 390.5T, 391.51, 391.63, 391.67, and 391.68.

**A. Part 385**

*Appendix B to Part 385—Explanation of Safety Rating Process*

In Section VII of Appendix B to Part 385, FMCSA makes conforming changes to the List of Acute and Critical Regulations. Specifically, the current entry for § 391.51(b)(7) (failing to maintain medical examiner’s certificate in driver’s qualification file (critical)) is redesignated as § 391.51(b)(6). This reflects that current § 391.51(b)(6), which relates to removed § 391.27, is deleted and that the paragraphs in that section are redesignated.

**B. Part 390**

*Sections 390.5T and 390.5 (Suspended)<sup>12</sup> – Definitions*

In addition to the changes proposed in the NPRM, FMCSA amends the definition of *motor vehicle record* in §§ 390.5T and 390.5 by inserting “, for drivers licensed by a State only, is” before the reference to the Driver Privacy Protection Act. This clarifies that only records of drivers licensed by a State are subject to the Driver Privacy Protection Act. FMCSA also makes minor changes for clarity. The Agency replaces the comma before “provided” with “that is” and deletes the comma after “such as.” The definition reads, “*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or

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<sup>12</sup> On January 17, 2017, FMCSA suspended certain regulations relating to the electronic Unified Registration System and delayed their effective date indefinitely (82 FR 5292). The suspended regulations were replaced by temporary provisions that contain the requirements in place on January 13, 2017. Section 390.5 was one of the sections suspended and § 390.5T, which is currently in effect, was one of the replacement sections added (82 FR 5311).

employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

### **C. Part 391**

#### *Section 391.11 – General Qualifications of Drivers*

In § 391.11, FMCSA removes paragraph (b)(6), which relates to removed § 391.27, and redesignates paragraphs (b)(7) and (b)(8) as paragraphs (b)(6) and (b)(7).

#### *Section 391.21 – Application for Employment*

In § 391.21(b)(5), FMCSA changes the reference to a “State” to a “driver’s licensing authority.”

#### *Section 391.23 – Investigation and Inquiries*

In paragraphs (a)(1) and (b) of § 391.23, FMCSA changes the references to a “State” to a “driver’s licensing authority.” In paragraph (b), FMCSA also removes the requirement for a motor carrier to certify that no record exists when no MVR is received from the licensing authority for a driver.

#### *Section 391.25 – Annual Inquiry and Review of Driving Record*

In § 391.25(a), FMCSA replaces the words “the appropriate agency of every State in which” with the words “each driver’s licensing authority where.”

#### *Section 391.27 – Record of Violations*

FMCSA removes § 391.27 and reserves it for future use.

#### *Section 391.51 – General Requirements for Driver Qualification Files*

FMCSA makes several changes to § 391.51. The Agency deletes the words “State” in paragraph (b)(2) and “State driver licensing agency” in paragraph (b)(4) and adds in their place the words “driver’s licensing authority.” FMCSA deletes paragraph (b)(6), which relates to deleted § 391.27, and redesignates paragraphs (b)(7) through (b)(9) as paragraphs (b)(6) through (b)(8). The Agency revises paragraph (d)(1) by deleting the words “State driver licensing agency” and adding in their place “driver’s

licensing authority.” FMCSA deletes paragraph (d)(3), to remove the reference to deleted § 391.27, and redesignates paragraphs (d)(4) through (d)(6) as paragraphs (d)(3) through (d)(5). The cross-reference in newly redesignated paragraph (d)(3) is changed from “§ 391.51(b)(7)(ii)” to “§ 391.51(b)(6)(ii)” to reflect the redesignations in paragraph (b). Finally, in addition to the changes proposed in the NPRM, FMCSA changes the internal cross-reference in newly redesignated paragraph (b)(6)(iii) from “§ 391.51(b)(8)” to “§ 391.51(b)(7)” to reflect the redesignations in paragraph (b).

*Section 391.63 – Multiple-Employer Drivers*

In § 391.63, FMCSA removes paragraph (a)(5) to delete the reference to § 391.27. The Agency conforms punctuation to reflect paragraphs (a)(3) and (a)(4) are now the last in the list. In addition to the changes proposed in the NPRM, FMCSA conforms the first sentence of paragraph (b) by changing “State” to “driver’s licensing authority.” FMCSA also replaces all instances of “his/her” with “the driver’s” and adds a serial comma after “type.”

*Section 391.67 – Farm vehicle drivers of articulated commercial motor vehicles and*

*Section 391.68 – Private motor carrier of passengers (nonbusiness)*

In addition to the changes proposed in the NPRM, FMCSA makes conforming changes to cross-references in §§ 391.67 and 391.68. The changes are necessary because FMCSA deletes from § 391.11 the paragraph previously designated as (b)(6) (relating to removed § 391.27) and redesignates the remaining paragraphs. Accordingly, FMCSA changes the cross-references in §§ 391.67(a) and 391.68(a) from “391.11(b)(1), (b)(6) and (b)(8)” to “391.11(b)(1) and (b)(7).”

## **XI. Regulatory Analyses**

### **A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures**

FMCSA has considered the impacts of this rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. OIRA within OMB has determined that this rule is not a significant regulatory action under section 3(f) of E.O. 12866. Accordingly, OMB has not reviewed it under that E.O.

As described above, the purpose of this regulatory action is to remove § 391.27 and the requirement for drivers to provide their motor carrier employers a list of convictions for traffic violations (other than parking) that occurred during the previous 12 months or a certification of no convictions. This rule retains the requirement in § 391.25 that motor carriers make an annual inquiry to obtain a driver's MVR. Because § 391.25 is limited to inquiries for drivers licensed by a State, this rule modifies § 391.25 to require motor carriers to request a driver's MVR from each licensing authority that issued the driver a license. To maintain consistency within part 391 with respect to requests for MVRs, FMCSA makes conforming changes to § 391.23, which requires motor carriers to request MVRs for the 3 years preceding the date of employment when hiring a driver. These changes require motor carriers to request MVRs from Canadian and Mexican driver's licensing authorities. A change is also made in § 391.21 to require each driver to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers can make the required inquiries under § 391.23. These changes do not add new reporting or recordkeeping costs.

The elimination of § 391.27 results in cost savings to drivers because they will no longer spend time completing a list of convictions for traffic violations. It will also result in cost savings to motor carriers because they will no longer have to file the lists in driver qualification files. The Agency estimates that this rule will result in cost savings to CMV drivers and motor carriers of \$35.5 million over 10 years on an undiscounted basis, and \$24.9 million discounted at 7 percent over the 10-year analysis period. Expressed on an annualized basis, this equates to cost savings of \$3.5 million at a 7 percent discount rate.

The changes to §§ 391.21, 391.23, and 391.25 do not increase reporting or recordkeeping costs. This rule institutes new requirements for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State. However, the current OMB-approved information collection request (ICR) for §§ 391.23 and 391.25 titled “Driver Qualification Files,” OMB Control Number 2126-0004, already includes reporting and recordkeeping costs and burdens incurred by motor carriers to request MVRs for such drivers. As explained below, applicable motor carriers will not incur an increase in costs or burdens resulting from this rule. Nonetheless, FMCSA retains these costs and burdens under OMB Control Number 2126-0004 to treat all motor carriers consistently and for administrative convenience.

All motor carriers authorized to operate in the United States are required to file with FMCSA Form MCS-150 (Motor Carrier Identification Report), Form MCS-150B (Motor Carrier Identification Report and Hazardous Material Permit Application), or Form MCSA-1 (the online application). These registration forms require motor carriers to report the number of drivers they employ and are the source of driver counts in MCMIS, which counts the total number of drivers reported by both domestic and foreign motor carriers. In turn, FMCSA uses the MCMIS driver population data published in FMCSA’s annual *Pocket Guide to Large Truck and Bus Statistics*, which includes drivers employed



by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Thus, requests for MVRs for drivers holding licenses issued by Canadian or Mexican licensing authorities have already been included in the OMB-approved information collections for §§ 391.23 and 391.25. In addition, the time for all drivers to prepare and submit employment applications has already been included in the information collection for § 391.21.

This change requiring MVR inquiries to Canadian and Mexican driver's licensing authorities will have minimal, if any, impact, because relatively few drivers operate in the United States who are licensed by a foreign authority rather than by a State. Of the 6.8 million CMV drivers reported in FMCSA's *2020 Pocket Guide to Large Truck and Bus Statistics*,<sup>13</sup> the Agency estimates that at most only 2.3 percent are employed by Canadian motor carriers operating in the United States and 0.5 percent are employed by Mexican motor carriers operating in the United States. The combined total 2.8 percent represents 149,119 drivers reported as being employed by Canadian and Mexican motor carriers operating in the United States.

Canadian and Mexican motor carriers are already required by their applicable safety codes to request MVRs for their drivers from their licensing authorities.<sup>14</sup>

Accordingly, FMCSA has determined that the changes to §§ 391.23 and 391.25 to require

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<sup>13</sup> Available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-10/FMCSA%20Pocket%20Guide%202020-v8-FINAL-10-29-2020.pdf> (last accessed Aug. 12, 2021).

<sup>14</sup> Canadian National Safety Code (NSC) Standard 15, Facility Audit, establishes the minimum requirements for a Facility Audit and the contents of a driver's personnel/payroll records. Standard 15, Appendix A, Section 3 requires motor carriers to make available for a Facility Audit a driver abstract issued within the last 12 months. In addition, the driver's personnel/payroll record must include name, date of birth and license number, current license class and status (e.g., active or suspended), driver qualifications, and 2-year histories of traffic and criminal driving offenses, convictions, and accidents. NSC Standard 15 is available at <https://ccmta.ca/en/national-safety-code/national-safety-code-nsc#NSC> (last accessed Nov. 23, 2021). Similarly, the "Reglamento del Servicio de Medicina Preventiva en el Transporte" (Transportation Preventive Medicine Service Regulations) in Chapter VI (Of Solitary Responsibility of the Concessionaire or Permittee, or Airline Operator), Article 39 provides generally that motor carriers are to keep updated individual files for their employees that include records related to accidents or incidents of federal transport. The regulations are available at [http://www.sct.gob.mx/fileadmin/DireccionesGrales/DGPMPT/Documentos/normatividad/Reglamento\\_DGPMPT\\_10-05-2013.pdf](http://www.sct.gob.mx/fileadmin/DireccionesGrales/DGPMPT/Documentos/normatividad/Reglamento_DGPMPT_10-05-2013.pdf) (last accessed Nov. 23, 2021).

inquiries to Canadian and Mexican driver's licensing authorities for MVRs will not impose any new recordkeeping or reporting costs or burdens because Canadian and Mexican motor carriers are already making these inquiries. Though Canadian and Mexican motor carriers will not be required to change their current business practices and would not have any new costs or burdens imposed as a result of the final rule, FMCSA continues to include the costs and burdens for requesting MVRs in the information collections to treat all carriers consistently and for administrative convenience.

This rule does not increase costs to motor carriers because of fees paid to Canadian and Mexican driver's licensing authorities to request MVRs. The OMB-approved supporting statement for the Driver Qualification Files ICR, OMB Control Number 2126-0004 (available in the docket), provides that SDLAs assess motor carriers a \$10 fee to obtain MVRs consisting of a \$9 median fee charged by 51 SDLAs, plus a \$1 third-party processing fee. FMCSA has surveyed fees charged by driver's licensing authorities and third-party processing companies in Canada. FMCSA has determined that the median fee charged for an MVR in Canada is also \$9, when adjusted to United States dollars, and that third-party processing fees are consistent as well. There is no fee to request MVRs in Mexico. However, fees are considered a transfer payment, so they are not included in the benefit-cost analysis. They are included in the Paperwork Reduction Act supporting statement prepared for the final rule.

For all the above reasons, FMCSA has determined that the changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities to request MVRs will not impose any new reporting or recordkeeping costs.

#### *Scope and Key Inputs to the Analysis*

The baseline for this analysis is the monetized value of motor carriers' and drivers' time spent meeting the annual reporting and recordkeeping requirements of § 391.27. The estimated cost of this information collection has been approved by OMB in

the supporting statement for the Driver Qualification Files ICR. In this ICR, the Agency estimated the 3-year average burden associated with § 391.27 at 0.12 million hours and \$3.9 million. The baseline in this analysis extends the supporting statement projections an additional 7 years. That is, it estimates the costs that drivers and motor carriers would incur over the 10-year period 2022 through 2031, in the absence of the final rule.

#### *Driver Population Projection*

The driver population is based on a 0.448 percent annual growth rate applied to the 6.8 million driver population reported in FMCSA's *2020 Pocket Guide to Large Truck and Bus Statistics*.<sup>15</sup> The growth rate is a weighted average of the annual compound growth rates estimated using the United States Department of Labor (DOL), Bureau of Labor Statistics (BLS) Employment Projections Program point projections for the four categories of commercial vehicle drivers for 2019 and 2029.

Table 1 shows the calculation of the growth rate and the calculation of the weighted average compound growth rate.<sup>16</sup>

**Table 1. Population Growth Rate**

| BLS Standard Occupation Code (SOC)  | 2019 Total Employment (thousands) | 2019 Employment Percentage of Total | 2029 Projected Total Employment (thousands) | Compound Annual Growth Rate in Employment (2019-2029) | Weighted Average Compound Growth Rate |
|---|-----------------------------------|-------------------------------------|---|---|---------------------------------------|
|   | <i>A</i>                          | <i>B = A ÷ Sum of Column A</i>      | <i>C</i>                                    | <i>D = ((C ÷ A) ^ (1 ÷ 10)) - 1</i>                   | <i>E = B x D</i>                      |
| Heavy and tractor-trailer truck drivers (53-3032)                               | 2,030                             | 52.2%                               | 2,061                                       | 0.150%  | 0.078%                                |
| Light truck or delivery services drivers (53-3033)                              | 1,019                             | 26.2%                               | 1,079                                       | 0.579%  | 0.15%                                 |
| Passenger vehicle drivers, except bus drivers, transit and intercity (53-3058)* | 614                               | 15.8%                               | 682   | 1.056%  | 0.17%                                 |
| Bus drivers, transit and intercity (53-3052)**                                  | 223                               | 5.7%                                | 244   | 0.894%  | 0.05%                                 |
| <b>Weighted Average Growth Rate</b>   |                                   |                                     |   |   | <b>0.448%</b>                         |

Note: This table presents weighted average growth rates that do not equal the sum of the components due to rounding.

\* BLS SOC 53-3058 is new category introduced in 2019. Data for 2019 drivers are the sum of 26,202.

discontinued Bus categories SOC 53-3032 and 53-3041.

\*\* SOC 53-3021 changed to SOC 53-3052.  
 Moving Occupations. Available at <https://www.bls.gov/oes/current/oes530000.htm> (last accessed Aug. 12, 2021).

Table 2 shows the extrapolation of the driver population from the 6.8 million driver population at a 0.448 percent average annual growth. The 10-year projection period used in this analysis begins in 2022 and ends in 2031. This 10-year population projection is the base from which the Agency estimates the number of drivers who, in the absence of the final rule, would be required to provide motor carriers an annual list of violations.

**Table 2. Driver Population 2022-2031**

| <b>Year</b> | <b>Number of Drivers</b> |
|-------------|--------------------------|
| 2022        | 6,891,843                |
| 2023        | 6,922,732                |
| 2024        | 6,953,759                |
| 2025        | 6,984,926                |
| 2026        | 7,016,232                |
| 2027        | 7,047,678                |
| 2028        | 7,079,266                |
| 2029        | 7,110,995                |
| 2030        | 7,142,866                |
| 2031        | 7,174,880                |

The number of drivers who will no longer be required to submit an annual list of convictions for traffic violations or certificate of no convictions is estimated as the difference between the projections of annual driver population and annual job openings. The number of job openings is estimated by applying a 77.1 percent average annual driver turnover rate to the annual driver population shown in Table 2. The turnover rate is derived from turnover rates reported for three categories of motor carriers by ATA, which are over-the-road (OTR) carriers at 92 percent, truckload (TL) carriers at 74 percent, and less-than-truckload (LTL) carriers at 14 percent. The OTR category is made up predominantly of CMV drivers transporting general freight on behalf of for-hire motor carriers. The TL category is made up predominantly of CMV drivers transporting specialized freight on behalf of for-hire motor carriers. The LTL category is made up of CMV drivers transporting the property of their motor carrier and drivers engaged in

specialized operations analogous to LTL operations. The individual turnover rates are weighted by the relative shares of the driver population distributed among the three categories of motor carriers, which are 67 percent for OTR drivers, 18 percent for TL drivers, and 15 percent for LTL drivers.<sup>17</sup> As shown in Table 3, the sum of the product of the turnover rates and percentage of drivers by category results in a 77.1 percent weighted average turnover rate.

**Table 3. Weighted Average Turnover Rate**

| <b>Driver Type</b>                    | <b>Turnover Rate</b> | <b>Percent of Drivers in Driver Type Category</b> |
|---------------------------------------|----------------------|---|
| Over-the-Road                         | 92%                  | 67%   |
| Truckload                             | 74%                  | 18%   |
| Less-than-Truckload                   | 14%                  | 15%   |
| <b>Weighted Average Turnover Rate</b> |                      | <b>77.1%</b>                                      |

Note: The weighted average turnover rate is calculated as:  $(92\% \times 67\%) + (74\% \times 18\%) + (14\% \times 15\%) = 77.1\%$ .

Table 4 shows the annual projections of the number of drivers subject to the reporting requirements of § 391.27 who will no longer have to submit a list of convictions for traffic violations or certificate of no convictions, as § 391.27 is rescinded. Drivers who have been recently hired are not subject to the annual reporting requirements of § 391.27. The hiring process includes similar reporting requirements for which the information collection burden is accounted for under a different regulation. The projections cover the 10-year period ending in 2031.

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<sup>17</sup> American Transportation Research Institute, *ATRI Analysis of the Operational Cost of Trucking: 2020 Update*. Available at <https://truckingresearch.org/wp-content/uploads/2020/11/ATRI-Operational-Costs-of-Trucking-2020.pdf> (last accessed Aug. 12, 2021).

**Table 4. Driver Population Affected by Final Rule**

| <b>Year</b> | <b>Driver Population</b> | <b>Number of Job Openings</b> | <b>Driver Population Subject to § 391.27</b> |
|-------------|--------------------------|-------------------------------|--|
|             | <i>A = from Table 2</i>  | <i>B = A x 77.1%</i>          | <i>C = A – B</i>                             |
| 2022        | 6,891,843                | 5,310,854                     | 1,580,989                                    |
| 2023        | 6,922,732                | 5,334,657                     | 1,588,075                                    |
| 2024        | 6,953,759                | 5,358,567                     | 1,595,192                                    |
| 2025        | 6,984,926                | 5,382,584                     | 1,602,342                                    |
| 2026        | 7,016,232                | 5,406,708                     | 1,609,524                                    |
| 2027        | 7,047,678                | 5,430,941                     | 1,616,737                                    |
| 2028        | 7,079,266                | 5,455,282                     | 1,623,984                                    |
| 2029        | 7,110,995                | 5,479,733                     | 1,631,262                                    |
| 2030        | 7,142,866                | 5,504,293                     | 1,638,574                                    |
| 2031        | 7,174,880                | 5,528,963                     | 1,645,918                                    |

*Wage Rates*

FMCSA evaluated the opportunity cost of time for drivers using a rounded representative driver wage rate of \$37 per hour. This hourly cost represents the value of driver time that, in the absence of this rule, the driver would spend completing a list of convictions for traffic violations or certificate of no convictions but will now be available to perform other tasks. Table 5 summarizes the estimation of a weighted average hourly wage of \$36.52 for drivers. The weighted average hourly wage is derived from the BLS Occupational Employment Statistics (OES) estimates of the median wages of four categories of drivers assigned to the BLS SOC's shown in Table 5. The median hourly wages for each driver SOC are increased to account for fringe benefits and motor carrier overhead as explained below. The hourly wages are weighted based on the population of drivers for each SOC relative to the total population as shown by the percentages in Table 5, Column B.

BLS does not publish data on fringe benefits for specific occupations, but it does publish fringe benefit data for the broad industry groups in its quarterly Employer Costs for Employee Compensation (ECEC) news releases. This analysis uses the ECEC data to estimate a fringe benefit rate based on the hourly wage for the “transportation and

warehousing” sector average hourly wage (\$26.45) and average hourly benefits (\$13.78) for the “transportation and warehousing” sector.<sup>18</sup> The ratio of the two values results in a 52.1 percent fringe benefit rate (52.1% = \$13.78 per hour ÷ \$26.45) that is added to the average hourly wage. The hourly wage, including fringe benefits, is further increased by 27.4 percent to account for motor carriers’ overhead.<sup>19</sup>

**Table 5. Driver Hourly Wage Including Fringe Benefits and Motor Carrier Overhead**

| Standard Occupation Title and Code   | Total Drivers                | % of Total Drivers             | Median Hourly Base Wage      | Weighted Hourly Wage | Fringe Benefits Rate          | Overhead Rate | Weighted Average Hourly Cost             |
|--|------------------------------|--------------------------------|------------------------------|----------------------|-------------------------------|---------------|--|
|  | <i>A = from BLS OES Data</i> | <i>B = A ÷ Sum of Column A</i> | <i>C = from BLS OES Data</i> | <i>D = B x C</i>     | <i>E = from BLS ECEC Data</i> | <i>F</i>      | <i>G = D + (D x 0.521) + (D x 0.274)</i> |
| Heavy and tractor-trailer truck drivers (53-3032)                              | 1,797,710                    | 54.1%                          | \$22.66                      | \$12.26              | 52.1%                         | 27.4%         | \$22.01                                  |
| Light truck or delivery services drivers (53-3033)                             | 929,470                      | 28.0%                          | \$17.81                      | \$4.98               | 52.1%                         | 27.4%         | \$8.94                                   |
| Bus drivers, transit and intercity (53-3052)                                   | 162,850                      | 4.9%                           | \$22.07                      | \$1.08               | 52.1%                         | 27.4%         | \$1.94                                   |
| Passenger vehicle drivers, except bus drivers, transit and intercity (53-3058) | 431,986                      | 13.0%                          | \$15.54                      | \$2.02               | 52.1%                         | 27.4%         | \$3.63                                   |
| <b>Weighted Average Driver Wage</b>  |                              |                                |                              |                      |                               |               | <b>\$36.52</b>                           |

Notes:

(a) The number of drivers is the number of respondents by SOC included in the BLS survey. BLS discontinued the publication of SOC 53-3022, instead it is now included in SOC 53-3058. FMCSA derived the total employees for the original SOC 53-3022 by multiplying it by 0.72.

(b) The \$36.52 hourly weighted average wage does not equal the sum of the components due to rounding.

Section 391.27 requires motor carriers to incur labor costs to file drivers’ lists of convictions for traffic violations or certificates of no convictions in their driver

<sup>18</sup> DOL, BLS. “Employer Cost of Employee Compensation December 2020 News Release,” Table 4: Employer Costs for Employee Compensation for private industry workers by occupational and industry group. Available at <https://www.bls.gov/news.release/pdf/eccec.pdf> (last accessed Nov. 2, 2020).

<sup>19</sup> To estimate the overhead rates on wages, the Agency used industry data gathered for the Truck Costing Model developed by the Upper Great Plains Transportation Institute, North Dakota State University (Berwick, Farooq. Truck Costing Model for Transportation Managers. North Dakota State University. Upper Great Plains Transportation Institute. August 2003. Appendix A, pp. 42-47. Available at <http://www.mountain-plains.org/pubs/pdf/MPC03-152.pdf> (last accessed Aug. 20, 2021)). Research conducted for this model found an average cost of \$0.107 per mile of CMV operation for management and overhead, and \$0.39 per mile for labor, indicating an overhead rate of 27 percent (27% = \$0.107 ÷ \$0.39 (rounded to the nearest whole percent)).

qualification files. The burden hours associated with this task are monetized using an hourly wage for a file clerk adjusted for fringe benefits and motor carrier overhead. The BLS median wage for a file clerk is \$16.39 (SOC 43-4071). The hourly wage is increased for fringe benefits and motor carrier overhead, which results in a \$29.42 wage, rounded to \$29 ( $\$29.42 = \$16.39 + (16.39 \times (1+52.1\%) + 16.39 \times (1+27.4\%))$ ).

#### *Costs*

This rule will result in cost savings to drivers and motor carriers. Drivers' cost savings will be the result of no longer having to prepare an annual list of convictions for traffic violations or certificates of no convictions for their employers. Motor carriers will realize cost savings from no longer having to file the lists and certificates in driver qualification files. The Agency estimates that drivers and motor carriers will each spend 2 minutes on their respective tasks.

Table 6 shows the estimated driver cost savings resulting from the removal of § 391.27. Over the 10-year projection period, driver cost savings are estimated at \$19.9 million. At a 7 percent discount rate, driver cost savings are estimated at \$14.0 million and annualized cost savings are estimated at \$2.0 million.

**Table 6. Driver Cost Savings**

|       | <b>Driver Population Providing Lists of Convictions</b> | <b>Driver Burden Hours (million)</b> | <b>Driver Costs (\$ million)</b> | <b>Driver Cost at 7% Discount Rate (\$ million)</b> |
|-------|---|--------------------------------------|----------------------------------|---|
|       | <i>A = from Table 4, column C</i>                       | <i>B = A x (2 minutes ÷ 60)</i>      | <i>C = B x \$37</i>              | <i>D</i>  |
| 2022  | 1,580,989   | 0.053                                | (\$1.9)                          | (\$1.8)   |
| 2023  | 1,588,075   | 0.053                                | (\$2.0)                          | (\$1.7)   |
| 2024  | 1,595,192   | 0.053                                | (\$2.0)                          | (\$1.6)   |
| 2025  | 1,602,342   | 0.053                                | (\$2.0)                          | (\$1.5)   |
| 2026  | 1,609,524   | 0.054                                | (\$2.0)                          | (\$1.4)   |
| 2027  | 1,616,737   | 0.054                                | (\$2.0)                          | (\$1.3)   |
| 2028  | 1,623,984   | 0.054                                | (\$2.0)                          | (\$1.3)   |
| 2029  | 1,631,262   | 0.054                                | (\$2.0)                          | (\$1.2)   |
| 2030  | 1,638,574   | 0.055                                | (\$2.0)                          | (\$1.1)   |
| 2031  | 1,645,918   | 0.055                                | (\$2.0)                          | (\$1.0)   |
| Total |   | <b>0.54</b>                          | <b>(\$19.9)</b>                  | <b>(\$14.0))</b>                                    |



|                   |                |
|-------------------|----------------|
| <b>Annualized</b> | <b>(\$2.0)</b> |
|-------------------|----------------|

Notes:

- (a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).
- (b) Values shown in parentheses are negative values (i.e., less than zero), and represent a decrease in cost or a cost savings.

Table 7 summarizes motor carrier projected cost savings. Over the 10-year projection period, motor carrier cost savings are estimated at \$15.6 million. At a 7 percent discount rate, motor carrier cost savings are estimated at \$10.9 million and annualized cost savings are estimated at \$1.6 million.

**Table 7. Motor Carrier Cost Savings**

|                   | <b>Number of Lists of Convictions to File</b> | <b>Motor Carrier Burden Hours (million)</b> | <b>Motor Carrier Costs (\$ million)</b> | <b>Motor Carrier Cost at 7% Discount Rate (\$ million)</b> |
|-------------------|---|---|---|--|
|                   | <i>A = from Table 4, column C</i>             | <i>B = A x (2 minutes ÷ 60)</i>             | <i>C = B x \$29</i>                     | <i>D</i>   |
| 2022              | 1,580,989                                     | 0.053                                       | (\$1.5)                                 | (\$1.4)  |
| 2023              | 1,588,075                                     | 0.053                                       | (\$1.5)                                 | (\$1.3)  |
| 2024              | 1,595,192                                     | 0.053                                       | (\$1.5)                                 | (\$1.3)  |
| 2025              | 1,602,342                                     | 0.053                                       | (\$1.5)                                 | (\$1.2)  |
| 2026              | 1,609,524                                     | 0.054                                       | (\$1.6)                                 | (\$1.1)  |
| 2027              | 1,616,737                                     | 0.054                                       | (\$1.6)                                 | (\$1.0)  |
| 2028              | 1,623,984                                     | 0.054                                       | (\$1.6)                                 | (\$1.0)  |
| 2029              | 1,631,262                                     | 0.054                                       | (\$1.6)                                 | (\$0.9)  |
| 2030              | 1,638,574                                     | 0.055                                       | (\$1.6)                                 | (\$0.9)  |
| 2031              | 1,645,918                                     | 0.055                                       | (\$1.6)                                 | (\$0.8)  |
| Total             |   | <b>0.54</b>                                 | <b>(\$15.6)</b>                         | <b>(\$10.9)</b>  |
| <b>Annualized</b> |   |   |   | <b>(\$1.6)</b>   |

Notes:

(a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

(b) Values shown in parentheses are negative values (i.e., less than zero), and represent a decrease in cost or a cost savings.

The estimated cost savings resulting from rescinding § 391.27 total \$35.5 million over the 10-year projection period. At a 7 percent discount rate, the estimated total cost savings are \$24.9 million and the annualized cost savings are \$3.5 million.<sup>20</sup>

### *Benefits*

This rule will allow drivers and motor carriers to more efficiently allocate their time. As discussed above, eliminating the requirement for drivers to provide a list of their convictions for traffic violations or certificate of no violations on an annual basis will reduce the paperwork burden and result in cost savings for drivers and motor carriers. FMCSA does not expect this rule to affect safety negatively. Motor carriers will still be

<sup>20</sup> Totals are a sum of unrounded components and therefore may not add up.

made aware of their employees' convictions for driving violations via the annual MVR check required in § 391.25.

## **B. Congressional Review Act**

This final rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).<sup>21</sup>

## **C. Regulatory Flexibility Act (Small Entities)**

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),<sup>22</sup> requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Consistent with SBREFA and DOT policy, FMCSA conducted an initial regulatory flexibility analysis, published the analysis with the NPRM, and requested comments. Although FMCSA received numerous public comments on the NPRM for this rule, there were no comments specific to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file comments in response to the proposed rule. FMCSA subsequently reviewed the available information on the number

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<sup>21</sup> A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

<sup>22</sup> Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996), 5 U.S.C. 601 note.

of affected small entities and the impact of the rule on those small entities and presents the analysis and certification below.

### *Affected Small Entities*

This final rule affects interstate CMV drivers and interstate motor carriers. CMV drivers, however, do not meet the definition of a small entity in section 601 of the RFA. Specifically, CMV drivers are considered neither a small business under section 601(3) of the RFA, nor a small organization under section 601(4) of the RFA.<sup>23</sup>

Under the RFA, as amended, motor carriers may be considered small entities based on the size standards defined by SBA to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).<sup>24</sup> This rule could affect motor carriers in many different industry sectors in addition to the Transportation and Warehousing sector (NAICS sectors 48 and 49); for example, the Construction sector (NAICS sector 23), the Manufacturing sector (NAICS sectors 31, 32, and 33), and the Retail Trade sector (NAICS sectors 44 and 45). Not all entities within these industry sectors will be impacted by this rule; therefore, FMCSA cannot determine the number of small entities based on the SBA size standards. However, FMCSA anticipates that the majority of entities in the Truck Transportation subsector (NAICS code 484) and the Transit and Ground Transportation subsector (NAICS Code 485) are motor carriers that will be affected by this rule. FMCSA used data from the 2017 Economic Census to determine the percentage of motor carriers with annual revenue at or below the SBA size standards.<sup>25</sup> The

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<sup>23</sup> Though individual CMV drivers are not small entities for purposes of the RFA, individual CMV drivers who are owner-operators are considered small businesses for purposes of the RFA. In addition, driver and motor carrier cost savings are estimated on a per driver basis using an estimate of the total driver population that includes owner-operators.

<sup>24</sup> Executive Office of the President, OMB. “North American Industry Classification System.” 2017. Available at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html> (last accessed Oct. 29, 2021).

<sup>25</sup> U.S. Census Bureau, *2017 Economic Survey*, Table EC1700SIZEREVEST, Available at <https://data.census.gov/cedsci/table?t=Value%20of%20Sales,%20Receipts,%20Revenue,%20or%20Shipments&n=485&tid=ECNSIZE2017.EC1700SIZEREVEST&hidePreview=> (last accessed Oct 15, 2021).

Economic Census sums the number of firms classified according to their NAICS code by ranges of annual revenue. FMCSA used the annual revenue ranges with the high end closest to the SBA thresholds to determine the percentage of freight and passenger carriers that meet the definition of an SBA small entity. As discussed below, the Agency estimates that 99.2 percent of trucking firms and 99.4 percent of passenger carriers are classified as small businesses. The SBA threshold for NAICS Code 484 is \$30 million. For purposes of determining the percentage of trucking firms with annual revenue less than or equal to \$30 million, the Agency considered the annual revenue for all truck transportation firms reported in the Economic Survey under NAICS Code 484. The Economic Survey revenue range closest to the SBA \$30.0 million threshold includes all truck transportation firms with annual revenue ranging from \$10.0 million to \$24.9 million. The total number of truck transportation firms within the 8 ranges of annual revenue less than or equal to \$30.0 million accounts for 99.2 percent of survey respondents. The Agency finds that this 99.2 percent is a reasonable proxy for the number of trucking firms with annual revenue equal to or less than the \$30.0 million SBA threshold. The Agency used the same methodology to determine the percentage of passenger carriers that would be considered an SBA small entity. The SBA threshold for Transit and Ground Transportation firms (NAICS Code 485) is \$16.5 million. For purposes of determining the percentage of passenger carriers with annual revenue less than or equal to \$16.5 million, the Agency considered the number of passenger carriers in three NAICS Code subsectors: Charter Bus; Interurban Transportation and Rural Transportation; and School and Employee Transportation subsectors.<sup>26</sup> The Economic Census revenue range closest to the SBA \$16.5 million threshold includes passenger carriers with revenue ranging from \$5 million to \$9.9 million. Passenger carriers with

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<sup>26</sup> Commuter rail, public transit systems, taxi, limousine, and special needs transportation that are included in Subsector 485 are excluded from the analysis.

revenue less than or equal to \$9.9 million account for 99.4 percent of survey respondents within the three subsectors. Thus, the Agency finds that 99.4 percent of passenger carriers with revenue less than or equal to \$9.9 million is approximately the same percentage of those with annual revenue less than the \$16.5 million SBA threshold.

Therefore, FMCSA concludes that this rule will impact a substantial number of small entities.

### *Impact*

The Agency rescinds § 391.27 because it duplicates drivers' conviction information contained on MVRs that motor carriers currently receive annually pursuant to § 391.25. The elimination of § 391.27 results in cost savings to motor carriers because they will no longer have to file the lists and certificates in driver qualification files. FMCSA estimates a cost savings to all motor carriers of \$1.56 million annualized at a 7 percent discount rate from time savings (2 minutes per driver list of traffic convictions or certificate of no convictions) at an hourly wage rate of \$29 per hour.

In order to determine if this impact would be significant, FMCSA considers the impact as a percentage of annual revenue and estimates the impact to be significant if it surpasses 1 percent of revenue. For each affected driver, an individual motor carrier will save an estimated \$0.87 ( $\$29 \times .03$  hours). The motor carrier would need to have annual revenue below \$87 ( $\$.87 \div 0.01$ ) in order for this impact to reach the threshold of significance. It is not possible to determine the maximum number of drivers who would be affected at a given motor carrier in any 1 year. For illustrative purposes, FMCSA depicts the impact if a motor carrier employed 15 affected drivers. The annual opportunity cost savings would be \$13.05 ( $\$29 \times .03$  hours  $\times$  15 drivers), and the motor carrier would need to have annual revenues of equal to or less than \$1,305 for the impact to be considered significant. FMCSA considers it unlikely that a motor carrier would be able to operate with such low revenues in light of the sizeable expenses to own and

maintain CMVs and support employees. The impact of this rule increases linearly with the number of affected drivers (i.e., for each affected driver, the impact increases by \$0.87 per year); however, FMCSA does not anticipate that this rule will result in a significant impact on small motor carriers regardless of the number of affected drivers per motor carrier.

Section 391.25, as revised, requires motor carriers to request MVRs annually from every licensing authority where a driver holds or has held a CMV operator's license or permit in the past year. In addition, a conforming change is made to § 391.23(a) to require motor carriers to request MVRs from all driver's licensing authorities when hiring new drivers. As discussed earlier in the rule, the changes to §§ 391.23 and 391.25 do not increase costs to motor carriers.

Therefore, I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

#### **D. Assistance for Small Entities**

In accordance with section 213(a) of SBREFA,<sup>27</sup> FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on

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<sup>27</sup> Pub. L. 104-121, 110 Stat. 857, 558 (Mar. 29, 1996), 5 U.S.C. 601 note.

actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

**E. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$170 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2020 levels) or more in any 1 year. Although this final rule does not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

**F. Paperwork Reduction Act (Collection of Information)**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires that an agency consider the impact of paperwork and other information collection burdens imposed on the public. An agency is prohibited from collecting or sponsoring an information collection, as well as imposing an information collection requirement, unless it displays a valid OMB control number (5 CFR 1320.8(b)(3)(vi)).

This final rule revises the existing Driver Qualification Files ICR (OMB Control Number 2126–0004), which expires April 30, 2023. FMCSA revises the ICR due to the Agency’s development of this rule and to provide updated information on the driver population, driver turnover rates, and driver wage rates. FMCSA seeks approval for the revision and renewal of the currently approved information collection. FMCSA will submit a copy of the final rule to OIRA at OMB for review and approval of the information collections.

*Title:* Driver Qualification Files.

*OMB Control Number:* 2126–0004.



*Type of Review:* Revision and renewal of a currently approved information collection.

*Summary:* The final rule eliminates § 391.27, which requires that a driver operating a CMV must complete a list of convictions for traffic violations or a certification of no traffic convictions and submit the list or certification to the driver's employing motor carrier on an annual basis. The motor carrier must file the list or certification in the driver's qualification file. The elimination of § 391.27 also eliminates its related information collections in IC-2.1 (driver submits list of violations to motor carrier) and IC-2.2 (motor carrier files list of violations in driver qualification file).

The requirements of § 391.27 are largely duplicative of the requirements in § 391.25 that motor carriers must make an annual inquiry to States to request a driver's MVR and file the MVR in the driver's qualification file. Because § 391.25 is currently limited to inquiries for drivers licensed by a State, this rule modifies § 391.25 to require motor carriers to request a driver's MVR from each licensing authority that issued the driver a license. This change requires motor carriers to request MVRs from Canadian and Mexican driver's licensing authorities. To maintain consistency within part 391 with respect to requests for MVRs, FMCSA makes conforming changes to § 391.23 to require motor carriers to request MVRs from driver's licensing authorities, instead of States, for the 3 years preceding the date of employment when hiring a driver. FMCSA also changes § 391.21 to require each driver to provide on the employment application the issuing driver's licensing authority, instead of State, of each unexpired CMV operator's license or permit that has been issued to the driver so that motor carriers can make the required inquiries under § 391.23.

The changes to §§ 391.21, 391.23, and 391.25 do not increase paperwork burdens. This is because MCMIS, the repository for the Agency's driver population data, counts the total number of drivers reported by motor carriers (both foreign and domestic). Also,

for purposes of information collection burden calculation, the median fee for obtaining an MVR from either a foreign or a domestic authority is the same.

FMCSA uses the MCMIS driver population data, which currently includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Therefore, although this rule institutes new requirements for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State, the current OMB-approved information collections for §§ 391.23 and 391.25 in the Driver Qualification Files ICR already include reporting and recordkeeping costs incurred by motor carriers to request MVRs for such drivers. Similarly, the current OMB-approved information collection for § 391.21 already includes reporting and recordkeeping costs incurred by drivers to prepare and submit employment applications.

The changes to §§ 391.23 and 391.25 also do not increase costs to motor carriers resulting from fees paid to Canadian and Mexican driver's licensing authorities to obtain MVRs. As set forth in section 13 of the supporting statement, FMCSA has surveyed fees charged by driver's licensing authorities and third-party processing companies in Canada and has determined that they are consistent with those to obtain MVRs from States. There is no fee to obtain MVRs in Mexico.<sup>28</sup>

*Response to comments:* The NPRM served as the 60-day notice for the ICR revision and requested public comment on the information collection (85 FR 80745, Dec. 14, 2020). With respect to the information collections associated with § 391.27, a driver commented that the driver recently filled out the required paperwork and that it took about 1 minute.<sup>29</sup> FMCSA estimates that it takes drivers 2 minutes to complete a list of convictions or certificate of no convictions. One motor carrier commented that

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<sup>28</sup> Although Mexican motor carriers do not pay a fee to obtain MVRs, FMCSA continues to include the cost for consistency and administrative convenience.

<sup>29</sup> See Ben Hooser comment available at <https://www.regulations.gov/comment/FMCSA-2018-0224-0024>.

complying with § 391.27 is a “laborious task” and that it takes the better part of a month to receive information from drivers.<sup>30</sup> A motor carrier Director of Safety commented that it is costly and time consuming to comply with § 391.27 and estimated the annual administrative burden to be in excess of 100 hours.<sup>31</sup> Five other commenters stated that complying with § 391.27 is a huge paperwork burden, time or labor intensive, or a significant burden on motor carriers.<sup>32</sup> FMCSA received no substantive comments in response to the NPRM regarding the paperwork burden relating to §§ 391.21, 391.23, and 391.25.

*Burden estimates:* The elimination of § 391.27 deletes IC–2.1 (driver submits list of violations to motor carrier) and IC–2.2 (motor carrier files list of violations in driver qualification file). The OMB-approved burden associated with IC–2.1 is 0.06 million hours and \$2.16 million. The OMB-approved burden associated with IC–2.2 is 0.06 million hours and \$1.74 million. Thus, the elimination of § 391.27 results in a paperwork burden reduction of 0.12 million hours and \$3.9 million for drivers and motor carriers. However, these reductions are offset in the proposed burden due to increases in the driver population, the driver turnover rate, and driver wage rates. The OMB-approved burden for the ICR is 12.27 million hours at a cost of \$350.64 million. The proposed burden for the ICR is 14.23 million hours at a cost of \$426.16 million.

The revised total annual estimated burden associated with the Driver Qualification Files ICR that reflects the elimination of IC–2.1 and IC–2.2 and the updated driver population, driver turnover rate, and driver wage rate information is as follows.

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<sup>30</sup> See anonymous comment available at <https://www.regulations.gov/comment/FMCSA-2018-0224-0072>.

<sup>31</sup> See Adrian O’Hara comment available at <https://www.regulations.gov/comment/FMCSA-2018-0224-0073>.

<sup>32</sup> See Portland General Electric comment available at <https://www.regulations.gov/comment/FMCSA-2018-0224-0082>, anonymous comment available at <https://www.regulations.gov/comment/FMCSA-2018-0224-0087>, anonymous comment available at <https://www.regulations.gov/comment/FMCSA-2018-0224-0090>, TCA comment available at <https://www.regulations.gov/comment/FMCSA-2018-0224-0097>, and Heritage-Crystal Clean, LLC comment available at <https://www.regulations.gov/comment/FMCSA-2018-0224-0101>.

*Estimated Number of Respondents:* 7.52 million (6.92 million drivers + 0.60 million motor carriers).

*Estimated responses:* 113.97 million.

*Frequency:* Responses may be random, annual, or when hiring a driver.

*Estimated burden hours:* 14.23 million.

*Estimated cost:* \$426.16 million.

Additional information for the assumptions, calculations, and methodology summarized above is provided in the supporting statement. The supporting statement is available in the docket for this rulemaking.

*Request for Comments:* FMCSA asks for comment on the information collection requirements of this rule, as well as the revised total estimated burden associated with the information collections. Specifically, the Agency asks for comment on: (1) whether the proposed information collections are necessary for FMCSA to perform its functions; (2) how the Agency can improve the quality, usefulness, and clarity of the information to be collected; (3) the accuracy of FMCSA's estimate of the burden of this information collection; and (4) how the Agency can minimize the burden of the information collection.

If you have comments on the collection of information, you must submit those comments as outlined under ADDRESSES at the beginning of this final rule.

**G. E.O. 13132 (Federalism)**

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." FMCSA has determined that this rule does not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this

rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

## **H. Privacy**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005,<sup>33</sup> requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002<sup>34</sup> requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule.

The Agency has completed a Privacy Threshold Assessment to evaluate the risks and effects the rule has on collecting, storing, and sharing personally identifiable information. FMCSA determined that this rule does not create privacy risks to individuals. In addition, the Agency submitted the Privacy Threshold Assessment to DOT's Privacy Officer for review. The DOT Privacy Office also has determined that this rulemaking does not create privacy risk.

## **I. E.O. 13175 (Indian Tribal Governments)**

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal

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<sup>33</sup> Pub. L. 108-447, 118 Stat. 2809, 3268 (Dec. 8, 2004), 5 U.S.C. 552a note.

<sup>34</sup> Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), 44 U.S.C. 3501 note.

Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

**J. National Environmental Policy Act of 1969**

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 6.z. The content in this rule is covered by the categorical exclusions in paragraph 6.z.(1) regarding the minimum qualifications for individuals who drive CMVs, and in paragraph 6.z.(2) regarding the minimum duties of motor carriers with respect to the qualifications of their drivers. In addition, this rule does not have any effect on the quality of the environment.

**List of Subjects**

*49 CFR Part 385*

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 390*

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 391*

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, FMCSA amends 49 CFR chapter III as follows:

**PART 385—SAFETY FITNESS PROCEDURES**

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901-13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103-311, 108

Stat. 1673, 1676; sec. 408, Pub. L. 104-88, 109 Stat. 803, 958; sec. 350, Pub. L. 107-87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114-94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

2. Amend appendix B to part 385, section VII, by removing the entry for “§ 391.51(b)(7)” and adding an entry for “§ 391.51(b)(6)” in its place to read as follows:

**Appendix B to Part 385—Explanation of Safety Rating Process**

\* \* \* \* \*

**VII. List of Acute and Critical Regulations.**

\* \* \* \* \*

§ 391.51(b)(6) Failing to maintain medical examiner’s certificate in driver’s qualification file (critical).

\* \* \* \* \*

**PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS;**

**GENERAL**

3. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as added and transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112-141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113-125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

4. Amend § 390.5 as follows:

- a. Lift the suspension of the section;
- b. Revise the definition of “motor vehicle record”; and
- c. Suspend the section indefinitely.

The revision reads as follows:

**§ 390.5 Definitions.**

\* \* \* \* \*

*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

\* \* \* \* \*

5. Amend § 390.5T by revising the definition of “motor vehicle record” to read as follows:

**§ 390.5T Definitions.**

\* \* \* \* \*

*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

\* \* \* \* \*

**PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION  
VEHICLE (LCV) DRIVER INSTRUCTORS**

6. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.87.

**§ 391.11 [Amended]**

7. Amend § 391.11 by removing paragraph (b)(6) and redesignating paragraphs (b)(7) and (8) as paragraphs (b)(6) and (7), respectively.

8. Amend § 391.21 by revising paragraph (b)(5) to read as follows:



**§ 391.21 Application for employment.**

\* \* \* \* \*

(b) \* \* \*

(5) The issuing driver's licensing authority, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;

\* \* \* \* \*

9. Amend § 391.23 by revising paragraphs (a)(1) and (b) to read as follows:

**§ 391.23 Investigation and inquiries.**

(a) \* \* \*

(1) An inquiry, within 30 days of the date the driver's employment begins, to each driver's licensing authority where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

\* \* \* \* \*

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each driver's licensing authority required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no motor vehicle record is received from a driver's licensing authority required to submit this response, the motor carrier must document a good faith effort to obtain such information. The inquiry to a driver's licensing authority must be made in the form and manner each authority prescribes.

\* \* \* \* \*

10. Amend § 391.25 by revising paragraph (a) to read as follows:

**§ 391.25 Annual inquiry and review of driving record.**

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to each driver's licensing authority where the driver held a commercial motor vehicle operator's license or permit during the time period.

\* \* \* \* \*

**§ 391.27 [Removed and Reserved]**

11. Remove and reserve § 391.27.

12. Amend § 391.51 as follows:

a. Revise paragraphs (b)(2) and (4);

b. Remove paragraph (b)(6) and redesignate paragraphs (b)(7) through (9) as paragraphs (b)(6) through (8), respectively;

c. Revise newly redesignated paragraph (b)(6)(iii);

d. Revise paragraph (d)(1);

e. Remove paragraph (d)(3) and redesignate paragraphs (d)(4) through (6) as paragraphs (d)(3) through (5), respectively; and

f. Revise newly redesignated paragraph (d)(3).

The revisions to read as follows:

**§ 391.51 General requirements for driver qualification files.**

\* \* \* \* \*

(b) \* \* \*

(2) A copy of the motor vehicle record received from each driver's licensing authority pursuant to § 391.23(a)(1);

\* \* \* \* \*

(4) The motor vehicle record received from each driver's licensing authority to the annual driver record inquiry required by § 391.25(a);

\* \* \* \* \*

(6) \* \* \*

(iii) If that driver obtained the medical certification based on having obtained a medical variance from FMCSA, the motor carrier must also include a copy of the medical variance documentation in the driver qualification file in accordance with paragraph (b)(7) of this section;

\* \* \* \* \*

(d) \* \* \*

(1) The motor vehicle record received from each driver's licensing authority to the annual driver record inquiry required by § 391.25(a);

\* \* \* \* \*

(3) The medical examiner's certificate required by § 391.43(g), a legible copy of the certificate, or, for CDL drivers, any CDLIS MVR obtained as required by paragraph (b)(6)(ii) of this section;

\* \* \* \* \*

13. Amend § 391.63 as follows:

- a. Revise paragraphs (a)(3) and (4);
- b. Remove paragraph (a)(5); and
- c. Revise the first sentence of paragraph (b).

The revisions to read as follows:

**§ 391.63 Multiple-employer drivers.**

(a) \* \* \*

(3) Perform the annual driving record inquiry required by § 391.25(a); or

(4) Perform the annual review of the person's driving record required by § 391.25(b).

(b) Before a motor carrier permits a multiple-employer driver to drive a commercial motor vehicle, the motor carrier must obtain the driver's name, the driver's social security number, and the identification number, type, and issuing driver's licensing authority of the driver's commercial motor vehicle operator's license. \* \* \*

14. Amend § 391.67 by revising paragraph (a) to read as follows:

**§ 391.67 Farm vehicle drivers of articulated commercial motor vehicles.**

\* \* \* \* \*

(a) Section 391.11(b)(1) and (7) (relating to general qualifications of drivers);

\* \* \* \* \*

15. Amend § 391.68 by revising paragraph (a) to read as follows:

**§ 391.68 Private motor carrier of passengers (nonbusiness).**

\* \* \* \* \*

(a) Section 391.11(b)(1) and (7) (relating to general qualifications of drivers);

\* \* \* \* \*

Issued under authority delegated in 49 CFR 1.87.

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Robin Hutcheson  
Acting Administrator